

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 5:17-cr-265-FL-1  
5 Plaintiff, - New Bern, North Carolina  
6 v. - January 9, 2018  
7 JUSTIN COLE MILAM, - Motion Hearing  
8 Defendant. -  
9 -----

10 TRANSCRIPT OF MOTION HEARING  
11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN  
12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

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Proceedings recorded by mechanical stenography,  
transcript produced by notereading.

1 (Commenced at 11:10 a.m.)

2 THE COURT: Mr. Milam, my name is Judge  
00:00:02 3 Flanagan. This is the time the Court has set aside to  
00:00:04 4 sentence you for manufacturing child pornography. Have  
00:00:08 5 you read the presentence report?

00:00:09 6 THE DEFENDANT: Yes, Your Honor.

00:00:10 7 THE COURT: Have you had enough time to  
00:00:11 8 prepare with Mr. Manning for sentencing today?

00:00:14 9 THE DEFENDANT: Yes, Your Honor.

00:00:15 10 THE COURT: You're named in a one-count  
00:00:17 11 criminal information. The offense conduct, as described  
00:00:21 12 in the presentence report, puts you in contact with an  
00:00:25 13 individual named Christopher Coates, a registered sex  
00:00:30 14 offender, residing in Carpinteria, California back in  
00:00:34 15 June of 2015. As I read the presentence report, I  
00:00:39 16 gather that on one day, April 15 of 2015, you exchanged  
00:00:46 17 77 messages with Mr. Coates. And of those 77 messages,  
00:01:05 18 34 image files depicting child pornography were  
00:01:09 19 exchanged among those messages between you and Mr.  
00:01:15 20 Coates.

00:01:19 21 Then in October of 2015 a subpoena was  
00:01:26 22 obtained and served. And as described, eventually it  
00:01:38 23 was determined that you were, in fact, the luke.smith25  
00:01:46 24 who corresponded with Mr. Coates on April 15 of 2015.

00:01:53 25 Now, it took some time to search your

00:01:57 1 residence. That happened on January 12 of 2017. And  
00:02:03 2 you acknowledged that this was your account, and that  
00:02:08 3 you had begun trading child pornography about two years  
00:02:12 4 earlier, which would put you back in 2015, that you  
00:02:17 5 periodically deleted your child pornography collection  
00:02:20 6 only to began again. You acknowledged having images of  
00:02:25 7 child pornography on your smart phone to include images  
00:02:30 8 of toddlers being sexually abused.

00:02:34 9 Your smart phone was seized. An external  
00:02:38 10 hard drive was located, and this hard drive also  
00:02:42 11 revealed images of child pornography. So the probation  
00:02:49 12 office says that all total, there are 986 images of  
00:02:56 13 child pornography and 117 videos. And some of those  
00:02:59 14 images portray sadistic or masochistic conduct. For  
00:03:04 15 example, one image depicted a nude female between the  
00:03:07 16 ages of five and nine with her arms and legs bound by a  
00:03:12 17 rope bent over the back of a chair. Sixty-nine images  
00:03:16 18 and one video in your collection depicted sexual abuse  
00:03:20 19 of infants and/or toddlers.

00:03:25 20 The investigation recovered numerous chat  
00:03:29 21 conversations between you and other users of this  
00:03:33 22 service called Kik, which is used fairly frequently to  
00:03:39 23 exchange child pornography.

00:03:42 24 130 Kik Messenger user accounts were  
00:03:46 25 identified as receiving or sharing child pornography

00:03:50 1 with you. Most of those accounts were located overseas.

00:04:00 2 Probation highlights some of the more  
00:04:06 3 horrific exchanges including that you acknowledge  
00:04:13 4 sexually abusing a three-year-old child and a  
00:04:18 5 two-year-old child. However, despite your admissions of  
00:04:22 6 sexual abuse of multiple children, the investigation  
00:04:26 7 didn't uncover any evidence of hands-on offenses.

00:04:32 8 Then in the presentence report in paragraph  
00:04:35 9 11 it continues to describe ten child victims, separate  
00:04:41 10 victims that you communicated with and encouraged to  
00:04:45 11 send you images of their bodies classified as child  
00:04:52 12 pornography. These victims are referred to as between  
00:04:56 13 the ages of 13 and 17. And mostly the images have to do  
00:05:04 14 with them sending you pictures of their erect penises.

00:05:12 15 Now, your family background is given to me,  
00:05:16 16 and it's described in the letters that have been  
00:05:18 17 presented to the Court as being a very sheltered  
00:05:22 18 existence. You have been very involved with your church  
00:05:25 19 over the years and contributed to that community. You  
00:05:30 20 went to Liberty College, and I believe you were in your  
00:05:34 21 senior year when you were arrested.

00:05:36 22 THE DEFENDANT: Yes, ma'am.

00:05:37 23 THE COURT: I'm not sure how well you  
00:05:40 24 performed at Liberty University except that you need to  
00:05:43 25 complete one more semester in order to earn a bachelor

00:05:47 1 of science.

00:05:53 2 The scoring takes over the bulk of this  
00:05:57 3 report. It's very complicated and results in a total  
00:06:02 4 score which is to say far in excess of the total offense  
00:06:09 5 level category that's the highest under the guidelines;  
00:06:15 6 that's a 43. I think it ended up being -- well, it  
00:06:25 7 ended up being a 45; 48, then three points are taken off  
00:06:29 8 for acceptance of responsibility. But because you can't  
00:06:32 9 go higher than a 43, that's where we are.

00:06:37 10 Now, under the guidelines somebody in a  
00:06:42 11 Criminal History Category of I, which you are -- it's  
00:06:45 12 the most favorable category because you haven't had any  
00:06:48 13 contacts with the criminal justice system -- would be  
00:06:52 14 sentenced to life in prison. But you're charged under a  
00:06:55 15 statute that provides for not less than 15 years in  
00:06:59 16 prison or more than 30 years. So the guidelines tell  
00:07:04 17 the Court to consider a 30-year or 360-month term of  
00:07:08 18 incarceration.

00:07:10 19 Your behavior can be supervised for not less  
00:07:13 20 than five years nor more than the rest of your life.

00:07:16 21 The fine could be as much as a quarter of  
00:07:18 22 \$1 million. The guidelines suggest a range that starts  
00:07:20 23 at \$50,000.

00:07:21 24 There's a \$100 special assessment.

00:07:27 25 Now, I read your memorandum, Mr. Manning,

00:07:30 1 and you were hopeful that the government would be filing  
00:07:32 2 a motion, but I don't have one in front of me.

00:07:34 3 MR. MANNING: I was informed shortly after I  
00:07:36 4 filed the motion that the government was not going to be  
00:07:40 5 filing a 5K1.1 motion.

00:07:49 6 THE COURT: So I have a couple questions.  
00:07:55 7 These ten child victims, how did you find them?

00:08:01 8 THE DEFENDANT: It was through a -- it was  
00:08:04 9 through a website called Enable, and it essentially  
00:08:11 10 partners you with a random person. Then that's how I  
00:08:14 11 got in contact with those ten.

00:08:18 12 THE COURT: Does that conform to the  
00:08:20 13 government's understanding?

00:08:21 14 MR. ONTJES: Yes, Your Honor. Detective  
00:08:21 15 Omegle can explain this better.

00:08:27 16 THE COURT: How do you spell that?

00:08:27 17 MR. ONTJES: Omegle is O-m-e-g-l-e.

00:08:32 18 And it's a chat form, Judge Flanagan, that  
00:08:34 19 allows you to go into it; you put in certain parameters,  
00:08:38 20 topics that you're interested in talking about or  
00:08:41 21 meeting people interested in the same thing. In this  
00:08:44 22 case young boys primarily that the Defendant was  
00:08:46 23 interested in. Once he met these people, as he stated,  
00:08:50 24 anonymously, he then went offline, if you will, onto a  
00:08:55 25 Kik account where he then began trading and, as the

00:08:58 1 Court's already outlined in paragraph 11, began  
00:09:01 2 soliciting them to send him child pornography of  
00:09:05 3 themselves.

00:09:06 4 THE COURT: And he was doing that between  
00:09:08 5 November of 2016 and January of 2017?

00:09:15 6 MR. ONTJES: Literally the day before the  
00:09:16 7 search, Judge Flanagan.

00:09:17 8 THE COURT: So he's home on college  
00:09:19 9 Christmas break?

00:09:20 10 MR. ONTJES: That's correct. He was home  
00:09:22 11 for the holidays from Liberty University.

00:09:31 12 THE COURT: Is there a psychological report  
00:09:33 13 that I may have overlooked?

00:09:35 14 MR. MANNING: There is not.

00:09:42 15 THE COURT: All right. Well, tell me about  
00:09:44 16 his college years. I don't see much in the submissions  
00:09:49 17 that highlight his involvement at Liberty University.

00:09:53 18 MR. MANNING: Your Honor, his major was  
00:09:59 19 music. He also had particular interest in leading  
00:10:06 20 prayer sessions. And his stated intention and his  
00:10:12 21 current intention is to enter the ministry both for  
00:10:16 22 music and as a prayer leader. The attachment to his  
00:10:23 23 father's letter in the materials is accurate with  
00:10:28 24 respect to what his -- what he had been doing. His  
00:10:33 25 grades were a little bit above average, and he was

00:10:36 1 heading for graduation this past spring when he was  
00:10:40 2 arrested.

00:10:43 3 THE COURT: Okay. So that's the resumé  
00:10:45 4 you're referring to?

00:10:47 5 MR. MANNING: Yes, Your Honor.

00:10:57 6 THE COURT: Well, I guess this is a young  
00:11:07 7 man who is looking at a lot of time in prison. What do  
00:11:10 8 you think is the appropriate sentence?

00:11:12 9 MR. MANNING: Your Honor, I'll preface my  
00:11:18 10 recommendation by saying this: I've been working with  
00:11:20 11 him for a year. I've talked to him probably more than  
00:11:24 12 20 times about the offense, about the content of the  
00:11:31 13 material that the investigation showed. I've worked  
00:11:35 14 with Detective Ouellette, with Justin, with him trying  
00:11:40 15 to give law enforcement more information so that  
00:11:45 16 detective Ouellette could continue and deepen his  
00:11:49 17 investigation. And I've spoken to the people who have  
00:11:55 18 written letters. I spent time talking with his parents.  
00:12:00 19 And the trajectory of his life, with the exception of  
00:12:06 20 the crimes he's committed, has been absolutely straight  
00:12:11 21 and straight vertical from the time he was very small  
00:12:17 22 until the time of his arrest and even while he's been in  
00:12:21 23 jail in Wake County these past 12 months. He has worked  
00:12:29 24 toward being in the ministry. And the resumé shows that  
00:12:35 25 when he was younger, the school he went to, the North



00:12:39 1 Raleigh Christian Academy, also at Liberty University,  
00:12:44 2 on breaks and in the summertimes he was always being an  
00:12:48 3 intern at a church, working with the minister. The  
00:12:51 4 letters that Your Honor has reviewed show that that's  
00:12:54 5 been his primary focus.

00:12:58 6           The most telling of the letters I think is  
00:13:01 7 the second one in the brief, Your Honor, from Jill Davis  
00:13:07 8 describing an event. She's known him for years, and  
00:13:12 9 they were riding somewhere on a trip. They stop at a  
00:13:15 10 rest area. He's 19 years old, which is the same  
00:13:18 11 timeframe as when these interfaces with these young boys  
00:13:22 12 on the internet occurred. He had no idea what a rest  
00:13:27 13 area was. And there are three or four other letters  
00:13:31 14 which describe him in terms of when he was younger and  
00:13:34 15 befriending their family friends' children who were  
00:13:37 16 moving into town or going to school with him that he was  
00:13:41 17 naive. And throughout this past year that has been a  
00:13:49 18 profound impression on me is that he is naive. He's  
00:13:54 19 still naive with respect to the enormity of what he's  
00:14:00 20 facing and the enormity of what has happened in this  
00:14:03 21 other life that he leads that apparently has not crossed  
00:14:06 22 over into what his plan is for himself. I mean, it  
00:14:11 23 is -- I've represented thousands of people, and this is  
00:14:16 24 almost a unique situation for me because there's usually  
00:14:20 25 a bridge somewhere in the thinking or in the actions of

00:14:26 1 people I represent where the regular course of their  
00:14:30 2 lives becomes connected with and goes along parallel and  
00:14:36 3 intertwined with their criminal conduct. Here, what he  
00:14:40 4 did over a period of three or four years is completely  
00:14:47 5 separated, as far as I can tell, from anything that had  
00:14:50 6 to do with his education, with his schooling, with his  
00:14:53 7 relationships with his peer or older people. There's a  
00:15:00 8 line down the middle that doesn't seem to connect at any  
00:15:03 9 point that I've been able to determine.

00:15:07 10 And I looked at a lot of the material.  
00:15:09 11 Detective Ouellette, when I was doing my due diligence,  
00:15:13 12 taking me through some of this material that's described  
00:15:16 13 in the presentence report, it's completely foreign to  
00:15:21 14 what everybody that knows him well or thought they knew  
00:15:24 15 him well and what I've been able to determine from  
00:15:27 16 representing him for over a year.

00:15:29 17 Do I think that he needs treatment?

00:15:32 18 Absolutely. Evaluation and treatment for  
00:15:35 19 this.

00:15:36 20 And he's explained to me how he became  
00:15:39 21 involved with pornography and then ultimately ended up  
00:15:42 22 in child pornography. How he walked away it from two or  
00:15:47 23 three times. And it's referenced, I believe, in the  
00:15:51 24 presentence report where he would erase everything, then  
00:15:54 25 return to it. He did not have the skill set or the

00:15:57 1 tools with which to resist going back to it, but still  
00:16:01 2 maintained it completely separately from the rest of the  
00:16:05 3 trajectory of his life and his education.

00:16:09 4 Do I think that he's a monster? In the  
00:16:14 5 world that we live in, I've represented monsters, and  
00:16:17 6 Your Honor has dealt with monsters. Do I think he's a  
00:16:20 7 monster?

00:16:21 8 No.

00:16:21 9 Do I think there's something that needs to  
00:16:24 10 be addressed seriously with him in terms of evaluation  
00:16:28 11 and treatment?

00:16:29 12 Yes.

00:16:31 13 Do I think that the public needs to be  
00:16:34 14 separated from him for 30 years or more as a result of  
00:16:38 15 what he's done?

00:16:40 16 No.

00:16:41 17 But I do think that he needs to be seriously  
00:16:46 18 evaluated and treated and have this other part of him  
00:16:53 19 identified and erased if possible or brought into  
00:16:58 20 control.

00:16:58 21 And then the rest of his life is already on  
00:17:02 22 autopilot in terms of what he wants to do. And we've  
00:17:06 23 talked about how he's going to be prohibited from doing  
00:17:09 24 a lot of things if he ever regains his freedom in terms  
00:17:12 25 of dealing with persons that he wants to counsel because

00:17:18 1 a lot of them may be children, people underage, and he  
00:17:23 2 will not be permitted to do that except under extremely  
00:17:29 3 circumscribed circumstances. Nevertheless, that is what  
00:17:33 4 he wants to do. He wants to go into a ministry as he is  
00:17:36 5 able to.

00:17:38 6 And I will say from talking to jail people,  
00:17:42 7 jail personnel in Wake County where he's been for the  
00:17:45 8 last year, he had a ministry going in his cell block  
00:17:50 9 with other prisoners who came to him for advice and  
00:17:55 10 counseling and prayer and that he was a beneficial  
00:18:00 11 presence in the places where he lived inside the Wake  
00:18:05 12 County Jail.

00:18:06 13 I counseled him against having relationships  
00:18:09 14 with any other prisoner because inside jails there are  
00:18:14 15 always people who are trying to take advantage of or to  
00:18:19 16 manipulate in some way.

00:18:20 17 And he said: Well, thank you very much, but  
00:18:22 18 that is not what I'm doing here.

00:18:25 19 And so even now, that's been what -- that's  
00:18:29 20 what he's been doing for the last year, not hiding in a  
00:18:35 21 corner, not feeling sorry for himself, but continuing in  
00:18:39 22 the way that -- I call it the bright side of him, has  
00:18:44 23 been planning to do since the beginning.

00:18:52 24 I think that whatever psychologically is  
00:18:56 25 wrong or off about him can be addressed with treatment

00:18:59 1 because everything else from people who know him well,  
00:19:03 2 and a lot of them are here behind me today, there are  
00:19:06 3 ten or 12 people here that came from Raleigh and New  
00:19:10 4 Bern and other places that have written letters and some  
00:19:11 5 other folks that wanted to be here, they all say the  
00:19:16 6 same thing.

00:19:17 7 THE COURT: Well, do you think that it would  
00:19:23 8 be beneficial to your advocacy on behalf of your client  
00:19:29 9 to have some additional time to develop this  
00:19:36 10 psychological assessment of him before I impose a  
00:19:40 11 sentence?

00:19:42 12 MR. MANNING: I would certainly do that.

00:19:52 13 THE COURT: Would there be any objection on  
00:19:54 14 the part of the Government if I were to continue the  
00:19:56 15 sentencing for the purpose of that assessment being  
00:20:00 16 undertaken and a report being provided?

00:20:03 17 MR. ONTJES: Well, Your Honor, obviously the  
00:20:04 18 United States is prepared to go forward today; that was  
00:20:07 19 our intent. But if the Court wishes to have more  
00:20:10 20 information that an evaluation would provide, the  
00:20:15 21 government does not object.

00:20:17 22 THE COURT: And the Defendant consents to  
00:20:22 23 this?

00:20:22 24 MR. MANNING: Yes.

00:20:22 25 THE DEFENDANT: Yes, ma'am.

00:20:24 1 THE COURT: I don't know, are you appointed  
00:20:25 2 or retained?

00:20:27 3 MR. MANNING: Retained, Your Honor.

00:20:29 4 THE COURT: So you know there are a number  
00:20:33 5 of psychologists that provide this type of information?

00:20:36 6 MR. MANNING: Yes.

00:20:37 7 I'll keep the Court informed, keep the  
00:20:44 8 government informed as to my progress.

00:20:46 9 THE COURT: I'll set it in 90 days. And if  
00:20:49 10 we can get it done sooner than that, I can pull it back  
00:20:51 11 in. But I think that would give more than enough time.

00:20:54 12 MR. MANNING: Yes. The only proviso is  
00:20:58 13 Judge Howard may have me for four weeks in a difficult  
00:21:01 14 case in the next 90 days, But I'll let the Court know.

00:21:05 15 THE COURT: If that happens, we can work  
00:21:07 16 around that.

00:21:08 17 MR. MANNING: Thank you.

00:21:09 18 THE COURT: Otherwise, we'll just go ahead  
00:21:10 19 for purposes of not losing track of it, put it on the  
00:21:13 20 docket for that term in 90 days. But if there's a need,  
00:21:17 21 either side has a need to continue it, just let me know.  
00:21:20 22 So the report will be shared with the government and  
00:21:24 23 filed under seal with the Court.

00:21:25 24 MR. MANNING: Yes.

00:21:27 25 THE COURT: But I don't want to -- you might

00:21:33 1 well have a right, if you review the report and you  
00:21:35 2 determine it doesn't help your advocacy -- I mean, I'm  
00:21:39 3 not making this a court order, so maybe we need to kind  
00:21:42 4 of talk through this. But I don't want to override your  
00:21:48 5 attorney-client relationship.

00:21:51 6 MR. MANNING: I'll make that determination,  
00:21:53 7 let the Court know one way or the other.

00:21:56 8 THE COURT: Because your argument returns to  
00:21:59 9 this time and time again about psychologically he's  
00:22:03 10 not -- he's not a danger; he can be treated. And so I  
00:22:09 11 think for me to fully assess the weight of that  
00:22:13 12 argument, I'm giving you the opportunity to have him  
00:22:18 13 evaluated. And I'm giving you the opportunity, if you  
00:22:21 14 choose to, to proceed with benefit of that report.

00:22:26 15 MR. MANNING: Thank you.

00:22:27 16 THE COURT: So I think that's how I'm  
00:22:29 17 leaving it. Anything else?

00:22:31 18 MR. ONTJES: No, Your Honor. Thank you.

00:22:32 19 THE COURT: It's a very troubling, troubling  
00:22:34 20 case. I did think it was interesting that I didn't hear  
00:22:39 21 from anybody at Liberty. There's no letter you sent me  
00:22:44 22 from anybody at Liberty University, right? If you want  
00:22:51 23 to develop that part of your client's history and  
00:22:56 24 characteristics, you can supplement your filings. And,  
00:23:01 25 of course, if there's anything else you want me to take

00:23:04 1 into consideration, just get it to me a week before the  
00:23:07 2 sentencing when we finally do it.

00:23:09 3 So I'm going to remand you back in custody.  
00:23:13 4 You're going to get credit towards any sentence I impose  
00:23:17 5 with respect to time served. Thank you.

6 MR. MANNING: Thank you, Your Honor.

7 (Concluded at 11:34 a.m.)

8 - - -

9

10 **C E R T I F I C A T E**

11

12 I certify that the foregoing is a correct transcript  
13 from the record of proceedings in the above-entitled  
14 matter.

15

16 /s/ Tracy L. McGurk\_\_\_\_\_

\_\_\_\_8/23/2018\_\_\_\_

17 Tracy L. McGurk, RMR, CRR

Date

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